

## REMARKS

Claims 1-20 remain pending in the application with the present amendments. Claims 21-30 are canceled by the present amendment as being drawn to a non-elected invention. In addition, an Information Disclosure Statement is submitted herewith, together with authorization to debit the Deposit Account of the Assignee for any charge that is due at this time. Applicants appreciate the notification of allowability in the Office Action as to Claims 8-20 of the application. In the Office Action, claims 1-7 were rejected under 35 U.S.C. §103(a), alleged by the Examiner as being obvious over admitted prior art, in combination with U.S. Patent Publication No. US 2003/0010972 A1 to Ajmera et al. ("*the Ajmera Published Application*"). For the reasons set forth below, Applicants respectfully traverse the rejections and submit that claims 1-7 patentably overcome the rejections of the Office Action.

First, it is respectfully submitted that the *Ajmera Published Application* does not meet the threshold requirement under 35 U.S.C. §103 to be considered prior art available to be applied against the presently claimed invention. Both the *Ajmera Published Application* and the presently application are assigned to International Business Machines Corporation and the filing date of the present application is less than one year after the publication date of the *Ajmera Published Application* such that the *Ajmera Published Application* qualifies as prior art only under one or more of 35 U.S.C. subsections §102(e), (f), or (g). These facts invoke 35 U.S.C. §103(c) which states that such reference "will not preclude patentability." Accordingly, Applicants respectfully submit that the *Ajmera Published Application* cannot be used to reject the pending claims under 35 U.S.C. §103.

In addition, with respect to the reference made to the Background of the Invention section of the application as teaching certain features of the claimed invention, it bears repeating that Applicants disagree as to the conclusions drawn by the Office Action. In the Office Action, paragraph 2 states that Applicants' admitted prior art ("AAPA") "teaches a method of relaxing a stress present in a film contacting a base layer by reducing the stress of the film." The Examiner points to the Background of the Invention section of the Specification as providing such teaching. However, Applicants respectfully assert that there is no such admission in the Specification. Paragraph [0001] of the Background simply contains a statement of the field of the invention, which is required according to U.S. patent prosecution practice to indicate the field of the invention **to which the claimed subject matter is directed**. Accordingly, the field is indicated by the statement "The present invention relates to ... a method of altering a stress of a thin film . . . ." Thus, paragraph [0001] contains no such admission. Paragraphs [0002] through [0006] do not refer to modifying the stress present in a film; thus they contain no such admission.

Paragraph [0007] states that "Prior art methods have been unsuccessful in providing an effective process to modify stress in compressive and tensile channel regions at the same time." This statement contains no admission that the prior art teaches "a method of relaxing a stress present in a film contacting a base layer by reducing the stress of the film," as alleged by the Examiner. This statement indicates a shortcoming of the prior art in not providing an effective process to modify stress, a problem to be addressed. Paragraph [0007] also states that "it would be desirable to provide a single process for creating a desired compressive strain in the channel region of a PFET without creating the

same strain in the channel region of the NFET" again stating a shortcoming of the prior art that needs to be addressed.

Finally, paragraph [0008] indicates the desirability of developing a process to selectively relax a film by reducing the stress present in certain areas of a film. Here again, far from admitting such process to be prior art, these statements indicate a need to be addressed by the invention.

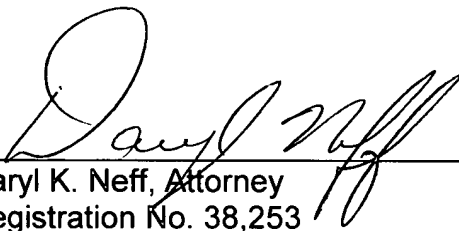
Since the *Ajmera Published Application* is not available as prior art to the present application and Applicants traverse the conclusions drawn by the Office Action with respect to the Background of the Invention section, the use of Harms et al. (U.S. Patent No. 4,994,141) need not be discussed further, Harms et al. being used only in combination with the other art discussed herein.

Accordingly, Applicants submit that the presently pending claims are patentably distinguished over the available art that is cited in the Office Action, and that the application is in immediate condition for allowance. Applicants respectfully request reconsideration and allowance of all of the claims at this time. If, however, the Examiner does not believe that such action can be taken at this time, the Examiner is requested to telephone Applicants' attorney at the number indicated below to discuss or clarify any matters relating to the application and the present amendment.

Respectfully submitted,

**Michael P. Belyansky, et al.**

By:

  
Daryl K. Neff, Attorney  
Registration No. 38,253  
Telephone: (973) 316-2612